

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 508 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

EXECUTIVE ENGINEER

Versus

SHIVUBHAI DESHALJI RATHOD

Appearance:

MR MD PANDYA for Petitioner

MR AK CLERK for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 26/07/1999

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution the Executive Engineer, Gujarat Electricity Board, Rajkot, has challenged the judgement and award dated 25.10.1985 passed by the Labour Court in Reference (LCR) No.307 of 1981 for reinstating the respondent-workman with continuity of service and with 50% back wages.

2 The respondent was employed as a driver with the Gujarat Electricity Board on the Nominal Muster Roll from March 1979 to September 1980. According to the respondent his duties hours were from 2 PM to 10 PM. The respondent contended that his services were discontinued without giving any notice or without paying notice pay or retrenchment compensation.

3 The Board denied the claim of the respondent and contended that the respondent was a badli employee and that he was casual employee employed on Nominal Muster Roll and that respondent was also working as a driver with a school at Rajkot in the morning shift. Hence, when he was asked to render service in the morning hours, he refused to do so. It was further contended that respondent was not entitled to notice pay and retrenchment compensation.

4 The Labour Court found that respondent-workman had put in 240 days in the year prior to his date of termination of his service and therefore even if the employer was justified in terminating the services, notice pay and retrenchment compensation were required to be paid. Since that was not done, the termination was held to be illegal. The Labour Court passed the award for reinstatement with 50% back wages.

5 While admitting this petition, this Court had passed order dated 24.4.1986 as under:-

"Mr Joshi, the learned counsel for the respondent, agrees that if the petitioner deposits Rs.30,000 in this Court and permits the respondent to withdraw the amount on furnishing security to the satisfaction of the Registrar of this Court, the respondent will have no objection in getting the Recovery Application stayed. Order accordingly. Interim stay is granted in terms of para 10(b). It is clarified that this will be without prejudice to the rights and contentions of both the parties in connection with their respective cases. The amount in question shall be deposited within six weeks from today."

It appears that the amount was accordingly deposited by the Gujarat Electricity Board on 14.8.1986.

6 The petition has reached final hearing today. It is contended that since respondent was working as a drive

with the school in the morning shift, the respondent was obviously not employed as a regular driver with the G.E.B. and that respondent was only a driver employed on casual basis. It is also contended that the Labour Court erred in passing the order for reinstatement when the respondent was not in continuous service or employment. It is further contended in the petition that the Labour Court has also erred in awarding 50% backwages when the respondent was not working on regular basis or permanent basis with GEB. It is also contended that non-disclosure by the respondent of his employment with the school would constitute misconduct on the part of the respondent.

7 In the facts and circumstances of the case and especially in view of the finding of fact given by the Labour Court that the respondent had put in 240 days in the year prior to the date of termination of his service, no fault can be found with the award of the Labour Court in reinstating the respondent in service with continuity of service. However, as far as back wages are concerned, in view of the fact that the respondent was employed with the school in the morning shift, the award of 50% back wages would be on the higher side if the respondent is to be continued in future also. On the other hand, if the GEB is inclined to hold any inquiry and terminate the services of the respondent or retrench the services of the respondent on the ground that the services are not required henceforth, it would be unfair to deny the 50% back wages to the respondent. Hence, in the facts and circumstances of the case, the following order is passed:-

O R D E R

The award of the Labour Court reinstating the respondent in service with continuity of service is not disturbed. However, the award of the Labour Court awarding 50% back wages to the respondent-workman is modified on the following lines:-

- (i) The amount deposited by the petitioner-employer being the amount of Rs.30,000 as per this Court's order dated 24.6.1986 shall be treated as the back wages for the entire period during which respondent was kept out of employment, if the petitioner continues the respondent in service till the age of superannuation, subject to the right of the petitioner to take appropriate action in accordance with law for any future misconduct.
- (ii) On the other hand, if the petitioner desires to proceed with any departmental action or to

retrench respondent-workman, the petitioner shall first deposit the amount of 50% back wages as awarded by the Labour Court within three months from today.

(iii) The petitioner shall exercise option within three months from today by sending intimation to that effect to the respondent-workman by registered post A/D.

Petition is accordingly disposed of in terms of the aforesaid order with no order as to costs.

(mohd)